

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100101A]

Marine Mammals; Pinniped Removal Authority

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of extension of letter of authorization.

SUMMARY: NMFS announces a 5-year extension to the Letter of Authorization (LOA) to the State of Washington for the lethal removal of individually identifiable California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA. This action is authorized under the Marine Mammal Protection Act (MMPA).

ADDRESSES: A copy of the LOA may be obtained by writing to Assistant Regional Administrator, Protected Resources Division, NMFS, 525 N.E. Oregon St., Suite 500, Portland, OR 97232-2737, or to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin (503) 231-2005, or

Tom Eagle (301) 713-2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

Information related to this extension, including the state's LOA extension request, Environmental Assessments (EA), and all of the Federal Register notices related to issuance, modification and subsequent extension of the original LOA, is available via the Internet at the following address: <http://www.nwr.noaa.gov>.

Background

Pursuant to Section 120 of the MMPA, NMFS initially issued a 3-year Letter of Authorization (LOA) that was valid through June 30, 1997, to the Washington Department of Fish and Wildlife (WDFW) for the lethal removal of California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA. The terms and conditions of the LOA were modified following the first year of implementation. The LOA was subsequently extended, for 4 years, through June 30, 2001.

Background information on the sea lion/steelhead conflict at the Ballard Locks and findings on the environmental consequences of issuance of the original LOA, the 1996 modification of its terms and conditions, and this extension are provided in two EAs prepared by NMFS in 1995 and 1996 and an updated EA prepared in 2001 (see Electronic Access).

On September 12, 2001, the State of Washington requested that NMFS extend the LOA for an additional 5 years (with a new expiration date of June 30, 2006) citing severely depressed steelhead run returns and the need for continued authorization to quickly remove any sea lion, if necessary, that meets the criteria outlined in the LOA while the state continues management efforts to recover the run. In addition, the state noted that there are no lethal removals planned at this time and requested the authorization be extended so that, as a last resort, it can respond in a timely manner to uncontrollable sea lion predation and protect steelhead as the run recovers. The state requested no modifications to the terms and conditions of the LOA other than the extension to June 30, 2006.

NMFS published a notice (66 FR 53210, October 19, 2001) that announced the state's request, proposed to extend the LOA, and solicited public comment on the proposed extension. The public comment period closed on November 19, 2001. No comments were received from the public.

NMFS also solicited comment from members of the Pinniped-Fishery Interaction Task Force (Task Force) that had been convened upon receipt of the original application from the State of Washington, regarding the proposed extension. Five written comments were received from Task Force members. Four of the Task Force members supported the extension and one member was opposed.

None of the comments contained substantive new information.

Comments supporting the extension were in general agreement that the steelhead run is severely depressed and that the state must be authorized to respond to predatory animals swiftly. One member noted that further extension of the LOA is justified because neither of the 1996 Task Force criteria for determining the success or failure of the authorization had been met.

The comment against the extension also agreed that the status of the steelhead run is precarious but opposed the extension based on the view that sea lion predation is not having a significant negative impact on the status and recovery of the steelhead run. Further, the opposing comment questioned whether the non-lethal measures taken to date to reduce sea lion predation on steelhead have been adequate to meet the threshold for issuance of a lethal removal authorization under Section 120 of the MMPA. This opposing view was raised during Task Force deliberations from 1994 to 1996 and considered by NMFS in issuance and modification of the LOA, and NMFS concluded that any sea lion predation was, and any future predation would be, a significant adverse impact on the steelhead run and that all feasible non-lethal deterrents had been attempted.

NMFS considered the comments received from the Task Force members while conducting its review of the environmental consequences of the proposed extension and when making its

decision to extend the LOA. The available information documents that steelhead spawning escapements have remained far below the goal set for the watershed and declined to record lows in 2000 and 2001 indicating a worsening condition that could lead to stock failure. In contrast, the California sea lion population is robust and continuing to grow coastwide. In the index areas of Puget Sound sea lion numbers were lower in 2001 than the peak years of 1986 and 1995 but have remained relatively consistent in Shilshole Bay near the entrance to the Lake Washington Ship Canal. Sea lions continue to forage occasionally at the Locks and have been seen taking salmonids there in spite of non-lethal deterrence measures that are ongoing. The precarious state of the steelhead population and the continuing presence of sea lions in the area heightens the concern that sea lions may enter the Locks area to forage during the steelhead run and threaten stock recovery.

One unidentified sea lion was observed taking a salmonid downstream of the railroad bridge during the 2000 steelhead run. Sea lions were recently observed in the Locks area during the 2001 coho salmon run, and one marked sea lion was observed taking coho salmon in the ensonified zone in September 2001. This raises concerns over the possibility that one of these sea lions may occur during the 2002 steelhead run, and it may have already developed a tolerance to the acoustic devices.

Sea lion presence at the Ballard Locks declined from 5.18 percent of hours observed in 1997 to 0.25 percent of hours observed in 2000. No sea lions were seen during approximately 274 hours of observations conducted from February through May, 2001 (WDFW unpublished data). The observation period overlapped with the smolt out-migration timing in May. The absence of sea lions in May is in contrast to the 1995 migration season when sea lion attendance at the Locks was highest during the smolt out-migration, and predatory sea lions were observed preying on smolt in the ensonified zone 50-60 percent of the time they were present at the Ballard Locks.

An estimated eight steelhead were lost to sea lion predation in 1997, based on observations by biologists monitoring the steelhead run, and two in 1998. From 1999 through 2001, any steelhead kills that were seen or reported occurred outside of the observation periods and, therefore, could not be used to estimate sea lion predation mortality for those years.

NMFS Action

Section 120 of the MMPA lists 4 factors that NMFS must consider in evaluating an application for approval or denial. These factors are as follows:

1. Population trends, feeding habits, the location of the pinniped interaction, how and when the interactions occurs, and how many individual pinnipeds are involved;
2. Past efforts to nonlethally deter such pinnipeds, and whether

the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

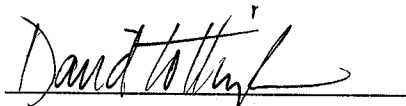
3. The extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

4. The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

NMFS considered these factors in the initial application and the modification to the initial LOA and a detailed description of these considerations was included in the 1995 and 1996 EAs. The 2001 EA briefly discusses relevant new information in these considerations and concludes that LOA should be extended because there is no substantial change in the system since the initial evaluation. The range-wide pinniped population has increased although the seasonal distribution of animals in Puget Sound has decreased. Steelhead numbers have continued to decline, and any predation continues to have a significant adverse impact on the run. Based on these considerations, the state's request, the available information on the critically depressed steelhead run, the continued presence of sea lions in the Lake Washington Ship Canal and Locks area, and consideration of comments from Task Force members (no public comments were received), NMFS has extended the LOA for 5 years to June 30, 2006. No other changes were made to the terms and conditions of the LOA. As required by the National Environmental Policy Act, NMFS has prepared an EA of the environmental

consequences of extending the existing LOA. A copy of the LOA and accompanying EA is available via the Internet (see Electronic Access).

Dated: JAN 30 2002

A handwritten signature in dark ink, appearing to read "David Cottingham", is written over a horizontal line.

David Cottingham
Acting Director, Office of Protected Resources
National Marine Fisheries Service